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No. 01-1231

In The

Supreme Court of the United States

CONNECTICUT DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, COMM., OFFICE OF ADULT PROBATION, ON BEHALF OF ROBERT BOSCO, DIRECTOR, JOHN ARMSTRONG, COMMISSIONER,

Petitioners,

v.

JOHN DOE, SAMUEL POE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTION PRESENTED

Did the court of appeals correctly apply Supreme Court precedent in holding that Connecticut's version of Megan's Law violates the Fourteenth Amendment by publicly and, Plaintiff-Respondent John Doe (Plaintiff Doe) claims, falsely branding Plaintiff Doe and due process class members as likely dangerous sexual offenders, plus imposing on them extensive, intrusive registration and reporting obligations which alter their legal status, without affording them notice and a hearing on whether they are dangerous?

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STATEMENT OF THE CASE

Plaintiff Doe respectfully submits that Defendants-Petitioners Department of Public Safety et al's [hereinafter Defendants] Petition For Writ Of Certiorari [Petition] should be denied. The Court of Appeals for the Second Circuit's decision below is consistent with this Court's controlling precedents. The decision below does not conflict with other courts of appeals' decisions cited by Defendants because it rests on a legal theory not addressed in those other decisions. And the record does not support Defendants' eleventh hour effort to recharacterize the challenged statute.

A. The Statute.

Plaintiff Doe claims he is not a dangerous sexual offender and does not pose a threat to the safety of the community. (Plaintiffs' Appendix [hereinafter Pl. App.] 2). Pursuant to Connecticut's version of Megan's Law, Connecticut General Statutes Sections 54-250 et seq. (2001) (the Connecticut Sex Offender Registry Act, or CT-SORA),[1] he nonetheless is required, without notice or a hearing, to register and be publicly displayed on the Internet as a sex offender. Conn. Gen. Stat. §§54-250 et seq. He must also keep Defendant-Petitioner Connecticut Department of Public Safety [Defendant Department of

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[1] Plaintiff Doe's Fourth Amendment Complaint (Pl. App. 1-21), was filed in 2000 when the 1999 revision of the Connecticut Sex Offender Registry Act (CT-SORA) was in place. The 2001 amendment to the law consisted of a single editorial change; the law otherwise is identical to the 1999 revision. Conn. Gen. Stat. Ann. § 54-250, Historical and Statutory Notes.

Public Safety or Defendant Department] up to date about his appearance and whereabouts, providing: his name; "identifying factors," including fingerprints; a current photograph; a list of other identifying characteristics (such as scars or tattoos); a blood sample for DNA analysis; his criminal history record; and his current address, which must be verified at least annually. This information is required for inclusion in what is intended to be a publicly disclosed and widely disseminated sex offender registry (Sex Offender Registry). Conn. Gen. Stat. §§54-250(3), 54-251(a), 54-252(a), 54-254(a), 54-257(c); (Pl. App. 25-29, ¶¶8-15; 38, ¶¶8-15).

If Plaintiff Doe moves to a new residence, he must inform Defendant Department of Public Safety of his new address within five days. Conn. Gen. Stat. §§54-251(a), 54-252(a), 54-254(a). If he regularly travels to or temporarily resides in another state, he must register with the responsible agency there and comply with whatever additional duties that state imposes on sex offenders. *Id.* He must complete and return to Defendant Department within ten days of receipt a nonforwardable verification form; if he fails to return the form, Defendant Department is required to notify law enforcement authorities, who in turn are required to apply for an arrest warrant. Conn. Gen. Stat. §54-257(c). Plaintiff Doe must submit to having his photograph taken where and whenever Defendant Department requests, at least once every five years. Conn. Gen. Stat. §§54-251(a), 54-252(a), 54-254(a), 54-257(d). Some registrants must fulfill these registration and reporting obligations for ten years; others must do so for life. *Id.* Failure to comply with any of these duties constitutes a class D felony, punishable by up to five

years in prison. Conn. Gen. Stat. §§54-251(d), 54-252(d), 54-253(c), 54-254(b).

Plaintiff Doe's updated identifying information appears on a single registry beneath the heading "Connecticut Department of Public Safety Sex Offender Registry," together with photographs and identifying information of offenders ranging from one-time nonviolent offenders to repeat offenders convicted of rape. *See* Conn. Gen. Stat. §§54-251(a) (requiring registration by "[a]ny person who has been convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor or a nonviolent sexual offense."); 54-250(5) (" 'Nonviolent sexual offense' means" fourth degree sexual assault, which includes conduct involving neither violence nor minors); 54-254(a) (court may require registration for "any felony that the court finds was committed for a sexual purpose"); 54-252(a) (requiring registration by "[a]ny person who has been convicted or found not guilty by reason of mental disease or defect of a sexually violent offense"); 54-257(a) (registry shall be maintained of all persons required to register including nonviolent and violent sex offenders).

Until its public disclosure was enjoined by the United States District Court for the District of Connecticut in this case, *Doe v. Lee*, 132 F. Supp. 2d 57 (D. Conn.), *aff'd*, *Doe v. Dep't of Public Safety ex rel. Lee*, 271 F.3d 38 (2d Cir. 2001), the Sex Offender Registry was widely publicly disseminated, not just at police stations, but via the Internet's "world-wide web" through state and media web sites with direct links to the registry. Conn. Gen. Stat. §§54-257,

54-258(a)(1); (Local Rule 9(c)(1) Plaintiffs' Statement of Undisputed Facts [hereinafter Plaintiffs' Undisputed Facts] Ex. F, G, H, *Doe v. Lee*, 132 F. Supp. 2d 57 (No. 3:99CV314). Defendant Department of Public Safety is directed by statute to promote the Sex Offender Registry's availability through annual reminders to Connecticut's media that the registry exists, with instructions on where and how it can be obtained. Conn. Gen. Stat. §54-258(a)(1).

The "sole avowed and legitimate purpose of the registry," to "disclos[e] the identity of persons who are currently a threat to public safety," sends a clear message that registrants are particularly likely to be dangerous. *Doe v. Dep't of Public Safety*, 271 F.3d at 49; *see* (Brief for Defendants-Appellants [hereinafter Defendants' Brief Below] at 1, *Doe v. Dep't of Public Safety*, 271 F.3d 38 (No. 01-7561) (law's mandate is to "make . . . registry information more readily available to the public[ ] in order to permit the public to protect itself")). The CT-SORA is based on New Jersey's original Megan's Law, which was enacted "to identify potential recidivists and alert the public when necessary for the public safety." *Doe v. Dep't of Public Safety*, 271 F.3d at 42, n. 4 (*quoting Paul v. Farmer*, 227 F.3d 98, 99 (3d Cir. 2000)). As the district court explained and the Court of Appeals for the Second Circuit agreed:

> The stated purposes of the [law] are to protect the public and facilitate law enforcement. Registration and dissemination serve these goals only because *some* registrants are likely to reoffend. Thus, the message that *some* registrants are currently dangerous is, and is intended to be, communicated to viewers of the registry.

Id. at 49 (*quoting Doe v. Lee*, 132 F. Supp. 2d at 64) (emphasis in original).

The message that registrants are dangerous is also a function of the undifferentiated nature of the Sex Offender Registry. People convicted of offenses requiring registration, from one-time nonviolent offenders to repeat rapists, appear together on a single list beneath the Department of Public Safety Sex Offender Registry label.

> The implied allegation [that Plaintiffs are dangerous, and which they claim is false,] arises from the undifferentiated nature of the registry, in which dangerous and nondangerous registrants are grouped in a single classification and no information is provided regarding any registrant's dangerousness. Because there can be no doubt that some registrants are dangerous, Connecticut's single classification falsely suggests that nondangerous registrants are a threat to public safety.

Doe v. Lee, 132 F. Supp. 2d at 62.

The law's administration likewise tells members of the public that registrants pose a threat to them. Pursuant to the CT-SORA, the Sex Offender Registry is maintained by Defendant Department of Public Safety, whose stated mission is to "provide[ ] a coordinated, integrated program for the protection of life and property within this state. The Department of Public Safety is charged to prevent crime, apprehend criminals, enforce motor vehicle laws, investigate crimes and traffic accidents and perform other regulatory and safety functions." (Plaintiffs' Undisputed Facts, Ex. F, G). When Plaintiff Doe filed this

lawsuit, the foregoing mission statement was prominently displayed on Defendant Department's Internet home page, above a link to the then "on-line" Sex Offender Registry. *Id.*

Unlike sex offender registration laws in, among other states, New York, New Jersey and Massachusetts, and despite the CT-SORA's avowed public safety purpose, Connecticut's Megan's Law provides no procedures to determine whether any registrant is dangerous before he or she is included in the Sex Offender Registry. Conn. Gen. Stat. §§54-250 et seq.; (Pl. App. 26, ¶9; 28, ¶13; 29, ¶15; 38, ¶¶9, 13, 15). While the stated purpose of the CT-SORA is to "make . . . registry information more readily available to the public[ ] in order to permit the public to protect itself," (Defendants' Brief Below at 1), that purpose is undermined by the Sex Offender Registry's admitted failure to provide any information to the public about which registrants pose a safety threat. An introductory paragraph to the Sex Offender Registry web site declares that no registrant is assessed for dangerousness, and that registrants are included simply by virtue of their convictions. (Petition 5). This "disclaimer" fails to dispel the clear message, sent by the collection and publication via the Internet in a single registry of all sex offenders and their convictions, together with their current appearances and whereabouts, that registrants pose a likely public safety threat. As the court of appeals observed, "[e]ven the disclaimer itself, by asserting that the [Department of Public Safety] 'has made no determination that any individual included in the Registry is currently dangerous,' clearly implies that some may be." *Doe v. Dep't of Public Safety*, 271 F.3d at 49. The message conveyed to the public

about sex offender registrants could not be more clear: Beware of the lot of them.

Relief from registration and reporting is available only to very limited categories of offenders. *See* Conn. Gen. Stat. §54-251(b), (c) (all fourth degree and certain second degree sexual assault offenders eligible for relief from registration if court finds "registration is not required for public safety"); Conn. Gen. Stat. §§54-255(a), (b), and (c) (offenders in cohabiting relationships with victims whose identities might be revealed, and one-time offenders who did not serve prison sentence must register, but public notification of registration information may be restricted if court finds no public safety threat). With the foregoing very limited exceptions, all past sex offenders are included in the Sex Offender Registry. Plaintiff Doe does not claim to be eligible for relief under the existing provisions. (Pl. App. 1-3).

The fact that sex offenders alone are required to register and report their current appearance and whereabouts underscores the message that registered sex offenders are likely to be dangerous. While the records of all prior convictions are maintained and made available to the public, only sex offenders are listed as a group, and only this group is singled out by the state to provide, for widespread publication, current information about what they look like and where they live. *Compare* Conn. Gen. Stat. §§54-142g et seq. (conviction histories of all offenders publicly available and listed by individual) *with* Conn. Gen. Stat. §§54-250 et seq. (conviction histories plus current identifying information of sex offenders listed together and actively disseminated via the Internet). As the court of appeals wrote:

> [P]ublication of the registry implies that each person listed is more likely than the average person to be currently dangerous. That implication seems to us necessarily to flow from the State's choice of these particular individuals about whom to disseminate information, a record as to their sex offences, and information as to their current whereabouts. This implication stigmatizes every person listed on the registry. And the plaintiff claims that, as to him, it is false.

Doe v. Dep't of Public Safety, 271 F.3d at 49.

B. The Proceedings Below.

In February 1999, Plaintiff Doe sued Defendants under 42 United States Code Section 1983 for declaratory and injunctive relief. (Pl. App. 2-3). Plaintiff Doe claimed, on behalf of himself and a class of similarly situated persons, that the CT-SORA violated his and class members' due process rights by stigmatizing them as presently dangerous sex offenders and imposing intrusive reporting obligations which alter their legal status, without giving them notice and an opportunity to be heard on whether they threaten public safety. (*Id.* at 20). Plaintiff Doe also claimed the law imposes an additional punishment for past offenses in violation of Article I, section 10 of the United States Constitution. (*Id.* at 20-21).

On March 31, 2001, on the parties' cross motions for summary judgment on Plaintiff Doe's Fourth Amended Complaint, the district court held the CT-SORA deprives

Plaintiff Doe of his right to due process under the Fourteenth Amendment, but does not violate the ex post facto clause of Article I. *Doe v. Lee*, 132 F. Supp. 2d 57.

Citing the CT-SORA's indiscriminate public disclosure of the Sex Offender Registry, which includes not just past convictions but current identifying information of dangerous and nondangerous offenders alike, the court rejected Defendants' claim, highlighted in their Petition to this Court, that the registry does no more than disseminate to the public "truthful and accurate information" about convicted sex offenders. (Petition 3); *Doe v. Lee*, 132 F. Supp. 2d at 63-64. The district court held the undifferentiated Sex Offender Registry conveys not just the truthful message that registrants are convicted sex offenders, but the stigmatizing, and with respect to nondangerous registrants, false message that they are presently dangerous people from whom the public needs to protect itself. *Doe v. Lee*, 132 F. Supp. 2d at 63-64. The court explained that the Sex Offender Registry's stated purpose of protecting the public, and its publication of current, identifying information about registrants, intentionally broadcasts that some registrants are dangerous. *Id.* at 62, 64.

The district court went on to hold that the CT-SORA's undisputed failure to give Plaintiff Doe any notice or opportunity to be heard on whether he is dangerous, "plus" the law's intrusive registration and reporting and extensive disclosure provisions, deprive Plaintiff Doe of a liberty interest without due process. *Id.* at 64-66.

On May 18, 2001, following briefs and oral argument, the district court certified a class of persons similarly

situated to Plaintiff Doe whose due process rights are violated by the CT-SORA (Plaintiffs), and entered a narrowly tailored injunction (the Injunction) which redresses the constitutional wrong by ending public disclosure of the Sex Offender Registry, while continuing to require registration and to allow law enforcement to obtain and disclose current registry information in order to investigate, prosecute, and protect the public from specific offenders who threaten public safety. *Doe v. Lee*, No. 3:99CV314 (RNC), 2001 WL 536727 *1 (D. Conn., May 18, 2001); *Doe v. Lee*, No. 3:99CV314 (RNC), 2001 WL 536729 *1 (D. Conn., May 18, 2001).[2] The court denied Defendants' request for an interim stay of the Injunction pending appeal. *Doe v. Lee*, No. 3:99CV314 (RNC), 2001 WL 536730 *1 (D. Conn., May 18, 2001). The court entered judgment in Plaintiffs' favor on their due process claims for declaratory and injunctive relief, and dismissed Plaintiff's related ex post facto claim. *Doe v. Lee*, No. 3:99CV314 (RNC) (D. Conn., May 21, 2001).

In language that underscores the message sent by the Sex Offender Registry that registrants are dangerous, Defendants sought an emergency stay of the district court's Injunction, urging the court of appeals that the Injunction deprived the public of "very critical registry

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[2] Defendants' assertion that Plaintiff Doe "was and remains the sole plaintiff and appellee," (Petition 4, n. 1), is mistaken. Defendants did not challenge the district court's due process class certification ruling on appeal; the court of appeals' decision applies to Plaintiff Doe and the due process class. *See Doe v. Dep't of Public Safety*, 271 F.3d 38 (2d Cir. 2001) (court reviewed injunction and declaratory rulings entered in favor of due process class).

information relating to sex offenders" who, as a group, "pose[ ] an ongoing danger to the state's citizens." *See* (Transcript of Civil Cause for Motion at 2, *Doe v. Dep't of Public Safety*, 271 F.3d 38 (No. 01-7561)). Following oral argument on June 5, 2001, the court of appeals denied emergency relief, but expedited Defendants' appeal. (*Id.* at 25).

On October 19, 2001, the court of appeals unanimously affirmed the district court's decision. In an opinion carefully analyzing the CT-SORA in light of this Court's due process precedent, discussion *infra* at 13-17, the court of appeals agreed with the district court that Connecticut's Megan's Law both sends a false message that Plaintiffs are dangerous, "plus" significantly alters their legal status, thereby satisfying this Court's "stigma plus" test for a protected liberty interest. *Doe v. Dep't of Public Safety*, 271 F.3d at 47-60.

The court concluded by holding the injunction was properly " 'tailor[ed] to fit the nature and extent of the violation,' " writing:

> We conclude that because it is the communication to the public of the fact that the plaintiff (and other members of the due process class) is in the registry, without a hearing as to the current danger that the plaintiff (and other members of the class) poses, that is both central to the constitutional infirmity of the statute and the principal object of the injunction, the injunction is properly tailored to fit the nature and extent of the violation.

Id. at 62 (*quoting United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1235 (2d Cir. 1987)).[3]

Defendants' Petition followed.

REASONS FOR DENYING THE WRIT

Defendants' request for plenary review should be denied because:

1. The Court of Appeals for the Second Circuit's decision below is consistent with this Court's controlling precedents;

2. The decision below does not conflict with other courts of appeals' decisions cited by Defendants because it rests on a legal theory not addressed in those other decisions; and

3. The record does not support Defendants' eleventh hour effort to recharacterize the challenged statute.

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[3] The court of appeals did not reach the district court's ruling on Plaintiff Doe's claim that the CT-SORA is an unconstitutional ex post facto law, writing: while "the punitive-in-fact aspect of the Connecticut sex offender registry statute as written is problematic[,]" "we need not and do not decide whether" the law violates the ex post facto clause because the due process injunction prevents Connecticut "from enforcing the registry law in a manner that might also render it punitive-in-fact" in violation of the ex post facto clause. *Id.* at 61.

The court left Plaintiff Doe free to "challenge any new Connecticut law or procedure to determine whether it is consonant with the Ex Post Facto Clause." *Id.* at 62. As the court of appeals' judgment need not be changed to preserve later ex post facto challenges, Plaintiff Doe does not cross-petition for certiorari on the ex post facto issue.

I. THE COURT OF APPEALS FOR THE SECOND CIRCUIT'S DECISION BELOW IS CONSISTENT WITH THIS COURT'S CONTROLLING PRECEDENTS

A. Stigma.

The court of appeals rejected Defendants' claim that the Sex Offender Registry does nothing more than convey "truthful and accurate information" about registrants, (Petition 3), properly reasoning that this "literal truth" claim ignores the context in which the Sex Offender Registry is published and the false message it conveys. *Doe v. Dept. of Public Safety*, 271 F.3d at 47-50; *see Codd v. Velger*, 429 U.S. 624, 627-28 (1977) (name clearing hearing required where state actor "creates and disseminates a false and defamatory *impression*" about plaintiff in connection with loss of liberty interest) (emphasis added).

The court of appeals carefully detailed the context and import of the Sex Offender Registry. The court recognized that as the "sole avowed and legitimate purpose of the registry" is to "disclose the identity of persons who are currently a threat to public safety," the registry "conveys the message that *some* persons listed on the registry are currently dangerous." *Doe v. Dep't of Public Safety*, 271 F.3d at 49 (emphasis in original). The court observed that the CT-SORA is based on the original Megan's Law, enacted " 'to identify potential recidivists and alert the public when necessary for the public safety,' " and named for a seven year old victim of an offender with a history of sexually assaulting children. *Doe v. Dep't of Public Safety*, 271 F.3d at 42, n. 4 (*quoting Paul v. Farmer*, 227 F.3d at 99). *See also*, discussion *supra* at 5-6 (Sex Offender Registry administered by Defendant Department of

Public Safety, whose mission of protecting public safety is prominently displayed on Department's home page, above a "link" to Internet registry) (Plaintiffs' Undisputed Facts, Ex. F, G).

The message also is sent by the Defendant Department's on-line disclaimer: the statement that the Department " 'has made no determination that any individual included in the [Sex Offender] Registry is currently dangerous,' clearly implies that some may be." *Doe v. Dep't of Public Safety*, 271 F.3d at 49. Because the registry tells the public that some registrants are dangerous, "it follows that the publication of the registry implies that each person listed is more likely than the average person to be currently dangerous." *Id.*

The dangerousness message "necessarily flow[s]" from the State's singling out of sex offenders for registration and reporting. *Id.* Other offenders are not listed as a group and made to tell the State, for dissemination to the public, where they are and what they look like for a publicly disseminated registry.

Accordingly, the court of appeals held:

> [T]he district court's [Injunction] does not target truthful speech. Publication of the registry in its present form implies that persons listed on the registry are particularly likely to be currently dangerous. Unless everyone on the registry *is* particularly likely to be dangerous, a proposition that the State neither asserts nor embraces, that implication is not true.

Id. at 50 (emphasis in original).

B. "Plus."

Recognizing that false stigma alone is insufficient, the court of appeals took great care to examine whether Plaintiff satisfied the "plus" part of this Court's "stigma plus" test for a liberty interest protected by due process. *Id.* at 51-60. The court focussed on *Paul v. Davis*, in which this Court made it clear that an "interest in reputation alone" is insufficient to establish a liberty interest; there also must be "a right or status previously recognized by state law" that is "altered or extinguished." 424 U.S. 693, 711 (1976) (*quoted in Doe v. Dep't of Public Safety*, 271 F.3d at 53).

Carefully analyzing the facts under the *Paul v. Davis* "plus" analysis, the court catalogued the "extensive and onerous" registration duties imposed by the CT-SORA. For a minimum of ten years and maximum of life, every person convicted of a broad list of sex-related offenses must: register and report his current whereabouts, including temporary changes in address; complete non-forwardable verification forms or face arrest for failure to respond; register with appropriate authorities in other states; submit to updated photographs where and when the State requests; provide blood samples for DNA analysis; and do all of the foregoing or face prosecution for a five year felony. *Doe v. Dep't of Public Safety*, 271 F.3d at 57. "These obligations, taken together," the court concluded, "easily qualify as a 'plus' factor under *Paul*. The imposition on a person of a new set of legal duties that, if disregarded, subject him or her to felony prosecution, constitutes a 'change of [that person's] status' under state law." *Id.* (*quoting Paul v. Davis*, 424 U.S. at 712).

The court cited a number of cases agreeing that sex offender registry obligations constitute a "plus." *Id.* at 57-58 (*citing Doe v. Pryor*, 61 F. Supp. 2d 1224, 1231 (M.D. Ala. 1999) (new legal duties and restrictions, including having to give notice to government of address change, constitute "plus"); *Doe v. Pataki*, 3 F. Supp. 2d 456, 468 (S.D.N.Y. 1998) (sex offender registration requirements and restrictions are "tangible impairment of a right in addition to mere harm to reputation"), *on remand from* 120 F.3d 1263 (2d Cir. 1997); *Doe No. 1 v. Williams*, 167 F. Supp. 2d 45, 53 (D.D.C. 2001) (sex offender registry statute included "extraordinar[ily broad] and exten[sive] burdens" which satisfy "plus" requirement). And the court distinguished cases from the Sixth and Ninth Circuits which rejected "plus" arguments based on privacy claims, not on ongoing registration and reporting obligations, which were not raised as the basis for the "plus" in those cases. *Id.* (*distinguishing Cutshall v. Sundquist*, 193 F.3d 466 (6th Cir. 1999), *cert. denied*, 529 U.S. 1053 (2000) and *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997), *cert. denied sub nom. Stearns v. Gregoire*, 523 U.S. 1007 (1998)); *see* discussion *infra* at 18-22 (arguing that court of appeals' decision in this case does not conflict with other federal decisions).

The court of appeals rejected Defendants' argument, reiterated in their Petition, that the stigma plus test is not met because the "plus" caused by the registration requirements "does not result from the same behavior as the 'stigma.' " Petition 24-25. Defendants write: "the [Sex Offender] Registry exists whether or not it is published, or the Registry would have been shut down by the lower court's injunction. The Registry still exists, as do the

registration requirements; only the public's access to the Registry has been enjoined." (*Id.* at 25).

As the court of appeals explained, the "plus" *does* result from the same behavior as the stigma. "The information published by the State is obtained by means of the registration requirement, and a person can be stigmatized by publication of the registry only if he or she is first subjected to that requirement. The 'plus' factor is thus a necessary condition for the stigmatization." *Doe v. Dep't of Public Safety*, 271 F.2d at 59. The court also explained that the fact that only publication, and not registration, was enjoined by the lower courts does not mean the stigma and plus are unrelated: "Our cases have not required the plaintiff to seek a remedy for both the stigma and the 'plus' factor." *Id.* (*citing, e.g., Brandt v. Bd. of Co-op Educ. Servs.*, 820 F.2d 41, 43 (2d Cir. 1987) (fired employee sued to dispel stigma through name clearing hearing without seeking to negate "plus" through reinstatement) (other citation omitted).

The stigma plus test having been satisfied, the court of appeals held that Plaintiff and due process class members "are entitled to the opportunity to have a hearing consistent with due process principles to determine whether or not they are particularly likely to be currently dangerous before being labeled as such by their inclusion in the publicly disseminated registry." *Id.* at 62. There being no dispute that the CT-SORA provides no such hearing, the court of appeals correctly affirmed the district court's Injunction, which precludes public disclosure of the Sex Offender Registry while leaving intact the registration provisions of the CT-SORA and the availability of the registry for use by law enforcement. *Id.*

II. THE DECISION BELOW DOES NOT CONFLICT WITH OTHER COURTS OF APPEALS' DECISIONS CITED BY DEFENDANTS BECAUSE IT RESTS ON A LEGAL THEORY NOT ADDRESSED IN THOSE DECISIONS

While the court of appeals observed that a number of district courts and the Courts of Appeals for the Sixth and Ninth Circuits "have not found a liberty interest in analogous circumstances," it also wrote:

> However, these courts have not necessarily disagreed with the contention that the ongoing legal obligations of sex offender registrants constitute a 'plus' factor. Neither the Sixth Circuit in *Cutshall [v. Sundquist*, 193 F.3d 466] nor the Ninth Circuit in *Russell [v. Gregoire*, 124 F.3d 1079] was presented with such an argument. Instead, the plaintiff in each of those cases claimed that the 'plus' factor consisted of the state's intrusion on his or her right to privacy.

Doe v. Dep't of Public Safety, 271 F.3d at 58 (*also citing Corbin v. Chitwood*, 145 F. Supp. 2d 92 (D. Me. 2001); *Akella v. Mich. Dep't of State Police*, 67 F. Supp. 2d 716 (E.D. Mich. 1999); *Femedeer v. Haun*, 35 F. Supp. 2d 852 (D. Utah 1999), *aff'd in part, rev'd in part*, 227 F.3d 1244 (10th Cir. 2000); *Lanni v. Engler*, 994 F. Supp. 849 (E.D. Mich. 1998); and *Doe v. Kelley*, 961 F. Supp. 1105 (W.D. Mich. 1997)). Like the Court of Appeals for the Second Circuit, the District Court for the District of Columbia has observed that while other courts have rejected Megan's Law challenges alleging "pluses" based on privacy and employment, those courts did not address claims that the obligations of registration alter registrants' legal status and constitute a "plus." *Doe No. 1 v. Williams*, 167 F. Supp. 2d at 56-57

(*distinguishing Cutshall v. Sundquist*, 193 F.3d 466 *and Femedeer v. Haun*, 227 F.3d 1244).

None of the cases cited by Defendants in their Petition addresses the claims decided by the Court of Appeals for the Second Circuit in this matter; the court of appeals has *not* "entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10(a).

In *Cutshall v. Sundquist*, the Court of Appeals for the Sixth Circuit analyzed public notification provisions that bear no resemblance to those of the CT-SORA. 193 F.3d 466; (Petition 9-10). The CT-SORA authorizes widespread, indiscriminate public disclosure of the Registry; the statute in *Cutshall* authorized public disclosure only of "*relevant information deemed necessary to protect the public concerning a specific sexual offender* who is required to register pursuant to this chapter." *Cutshall v. Sundquist*, 193 F.3d at 471 (*citing* Tenn. Code §40-39-106 (1994)) (emphasis in original). In addition, the "pluses" rejected in *Cutshall* were based not on registration obligations, but on allegedly impaired employment opportunities and privacy rights. *Id.* at 479.

In *Russell v. Gregoire*, the Court of Appeals for the Ninth Circuit examined a multi-tiered registry system with differing degrees of public notification based on individual assessments of registrants' dangerousness. 124 F.3d at 1082-83; (Petition 10-11). Connecticut does not have such a system. Moreover, unlike in Connecticut, public notification in *Russell* was limited by Washington Supreme Court case law holding " 'a public agency must

have some evidence of an offender's future dangerousness, likelihood of reoffense, or threat to the community, to justify disclosure to the public in a given case.' " *Id.* at 1082 (*quoting State v. Ward*, 869 P. 2d 1062, 1070 (Wash. 1994)). " 'An agency must disclose only that information relevant to and necessary for counteracting the offender's dangerousness.' " *Id.* (*quoting State v. Ward*, 869 P. 2d at 1070).

In addition to examining a registration and notification system decidedly different from the one in this case, the *Russell* court examined the registration burdens not to determine whether they met the plus factor requirement under a due process analysis, but whether they had a punitive effect under an ex post facto analysis. *Id.* at 1083.

In *Bruggeman v. Taft*, the Court of Appeals for the Sixth Circuit relied on its decision in *Cutshall* to uphold the dismissal of a pro se plaintiff's civil rights complaint which alleged, inter alia, that Ohio's sexual offender registration law violates the Fourteenth Amendment. No. 01-3380, 2001 WL 1450722 *1 (6th Cir., Oct. 31, 2001) (citing *Cutshall v. Sundquist*, 193 F.3d 466); (Petition 9, n. 8). In this unpublished opinion, without detailing the plaintiff's claims and without analyzing the provisions of Ohio's sex offender law, the court simply cited *Cutshall* and stated it had "recently held that there is no liberty interest in being free from having to register as a sex offender or from public disclosure of registry information." 2001 WL 1450722 *1. The "plus" arguments raised in this case were not addressed in *Bruggeman v. Taft*.

The plaintiff in *Corbin v. Chitwood* sued to enjoin police from notifying his community of his address and

sex offender history alleging, inter alia, that he was entitled to notice and a hearing prior to community notification. 145 F. Supp. 2d at 100-101; (Petition 9, n. 9). Unlike Plaintiff Doe, Corbin failed to allege the necessary "plus." "Corbin's complaint lack[ed] the 'something more' that would entitle him to procedural due process," and the court rejected his claim without addressing the stigma plus issue decided by the court of appeals in this case. *Id.* at 101.

In *Akella v. Michigan Dep't. of State Police*, plaintiffs' claimed "plus" factors were infringements on their rights to privacy, personal security, and to pursue employment and housing opportunities. 67 F. Supp. 2d at 728-731; (Petition 9, n. 9). Unlike Plaintiffs in this case, the plaintiffs in *Akella* "acknowledge[d] that the [disseminated] information is already a matter of public record." 67 F. Supp. 2d at 729. Focusing primarily on that admission, the *Akella* court summarily rejected plaintiffs' "plus" claims. The "plus" found by the *Doe v. Dep't of Public Safety* court was based on claims and facts neither raised nor ruled upon in *Akella*.

Unlike the Sex Offender Registry in this case, the Michigan registry reviewed in *Lanni v. Engler* and *Doe v. Kelly*, "is organized by zip code, so that only those registered offenders living within a given zip code will appear on any given registry." *Lanni v. Engler*, 994 F. Supp. at 852 (*citing* Mich. Comp. Laws Ann. §28.728(1) (1997); *see Doe v. Kelly*, 961 F. Supp. at 1109 (same); (Petition 10, n. 9). Unlike Plaintiffs in this case, the plaintiffs in *Lanni v. Engler* and *Doe v. Kelly* did not raise and the courts in those matters did not rule on a "plus" factor based on intrusive, ongoing registration obligations.

As shown above, the court of appeals' decision in this case is consistent with this Court's due process precedent, and is not "in conflict with the decision of another United States court of appeals on the same important matter." Sup. Ct. R. 10(a). As shown below, Defendants' Petition is inconsistent with the record and unsupported by the law.

III. THE RECORD DOES NOT SUPPORT DEFENDANTS' ELEVENTH HOUR EFFORT TO RECHARACTERIZE THE CHALLENGED STATUTE

A. Defendants' Petition Is Inconsistent With The Record Below And Connecticut Supreme Court Case Law.

Abandoning the public safety arguments they made so strenuously below, Defendants now argue that the purpose of Connecticut's and other states' Megan's Laws is to gather and provide information that the public simply wants to have, and that Congress encourages states, through certain federal grants, to give. (Petition 3). Defendants ignore the public safety arguments in their effort to avoid the Sex Offender Registry's ineluctable message that registrants are likely to be dangerous; that message is, in significant part, a function of the law's avowed purpose of protecting the public from sex offenders. *See Doe v. Lee*, 132 F. Supp. 2d at 62, 64 (Sex Offender Registry's stated purpose of protecting public and publication of current, identifying information about registrants, intentionally broadcasts that some registrants are dangerous).

Defendants argued below:

- "Connecticut has incrementally taken steps *in the interest of public safety* to expand the registration and notification requirements of the original Act, and to make such registry information more readily available to the public, *in order to permit the public to protect itself.*" (Defendants' Brief Below at 1) (emphasis added); and

- The district court's order enjoining the registry's publication poses "*very dramatic* and *drastic harm*" to the public by depriving it of "very critical registry information. . . . " (Transcript of Civil Cause for Motion at 2, *Doe v. Dep't of Public Safety*, 120 F.3d 1263 (No. 01-7561)) (emphasis added).

In contrast, Defendants' Petition claims the CT-SORA's purpose is solely to promote the free "flow of true and accurate information" to the public. (Petition 20). They tell this Court:

- "In enacting [Megan's Laws,] [s]tates have responded to public demand for information about sex offenders living in or having access to communities, as well as to Congress' conditioning the provision of federal grant money on the enactment of laws to make registration information available to the public." (Petition 3); and

- [T]he court of appeals' decision, "if allowed to stand or if adopted in other circuits, will control and hamper a state's ability to deliver to the public truthful, accurate and important information about sexual offenders, and hamper states' ability to comply with federal mandates." (*Id.*)

Defendants' apparent abandonment of their public safety arguments is inconsistent not just with their arguments below, but also with the Connecticut Supreme Court's assessment that Connecticut's Megan's Law "was enacted to protect the public from sex offenders." *State v. Kelly*, 770 A. 2d 908, 954 (Conn. 2001). In *Kelly*, the supreme court rejected a criminal defendant's claim that a sentencing court violated his rights under the ex post facto clause by imposing a sentence requiring registration as a sex offender. *Id.*[4] The supreme court addressed only the statute's registration requirements, not the public notification provisions. *Id.* at 952-54. Indeed, the court apparently, and erroneously, assumed *there would be no public notice* of the defendant's registration: "the fact that the 'registration itself . . . can usually be accomplished without public notice,' " means that registration " 'does not ordinarily result even in societal opprobrium or harassment.' " *Id.* at 954 (*quoting Doe v. Pataki*, 120 F.3d 1263, 1285) (2d Cir. 1997) (reversing ex post facto ruling and remanding on due process claims), *cert. denied*, 522 U.S. 1122 (1998)).[5]

Defendants' free flow of information argument is inconsistent with the record Defendants made below and with Connecticut Supreme Court case law.

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[4] The supreme court cited Connecticut General Statutes Sections 54-102r (repealed, 1998) and 54-102s (transferred to Conn. Gen. Stat. §54-260, 1998), but its discussion broadly refers to Connecticut's "Megan's Law." *State v. Kelly*, 770 A. 2d 908 (Conn. 2001)

[5] *State v. Kelly* does not dispose of Plaintiff Doe's ex post facto arguments, which are based in significant part on the CT-SORA's indiscriminate public disclosure provisions. *See id.*; discussion *supra* at 10, n. 2.

B. Defendants' Arguments Are Undermined By United States Supreme Court Case Law.

Defendants fail to explain why gathering and publishing the current appearance and whereabouts of past sex offenders is "important," (Petition 3), if the information serves no public safety or other identified purpose. That aside, whatever Defendants' rights to gather and disseminate truthful information to the public may be, those rights are not implicated in this case in which Defendants publish not truthful, but false and defamatory information. *Doe v. Dep't of Public Safety*, 271 F.3d at 50 ("the district court's order does not target truthful speech").

Defendants do not dispute the material facts on which the district court and court of appeals based their carefully drawn legal conclusion that, as to nondangerous registrants, the Sex Offender Registry sends a false message that registrants are likely to be currently dangerous. *See* (Petition 5-7, 18-20) (summarizing district and court of appeals' holdings). Instead, Defendants urge that the Sex Offender Registry cannot be defamatory because it contains only "accurate" information about sex offenders. (Petition 3-5, 18-20).

Defendants' "literal truth" argument has been rejected by this Court. Where the State "creates and disseminates a false and defamatory *impression*" about a plaintiff in a way that implicates a liberty interest, the plaintiff is entitled to a due process hearing to clear his name. *Codd v. Velger*, 429 U.S. at 628 (emphasis added); *cf. Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990) (even statement of opinion is defamatory where it *"impl[ies]* a false assertion of fact") (emphasis added). Defendants' argument that registry information is literally "accurate"

fails to negate the Sex Offender Registry's "impli[cation] that persons listed on the registry are particularly likely to be currently dangerous." *Doe v. Dep't. of Public Safety*, 271 F.3d at 50.

In another argument that has been rejected by this Court, Defendants urge that they provide no information about dangerousness because it is too "costly, cumbersome and inaccurate" to "rank[ ] sexual offenders by their likelihood to reoffend." (Petition 4). This Court has written:

> Our cases indicate . . . that from a legal point of view there is nothing inherently unattainable about a prediction of future criminal conduct. Such a judgment forms an important element in many decisions, and we have specifically rejected the contention . . . 'that it is impossible to predict future behavior and that the question is so vague as to be meaningless.'

Schall v. Martin, 467 U.S. 253, 278-79 (1984) (*quoting Jurek v. Texas*, 428 U.S. 262, 274 (1976)) (plurality opinion) (footnote omitted); *accord Kansas v. Hendricks*, 521 U.S. 346, 358 (1997); *cf. Kansas v. Crane*, 122 S. Ct. 867, 875 (2002) (a finding that mental abnormality or disorder renders previous offender likely to commit future acts of sexual violence is "coherent, and (with the assistance of expert testimony) well within the capacity of a normal jury") (Scalia, J., dissenting).

Defendants' failure to provide any information about whether and which registrants are dangerous undermines the stated public safety purpose of the CT-SORA, and misleads the public by implying that all registrants are likely to pose a threat to the safety of women and children.

C. Defendants' Petition Is Unsupported By The Statutes They Cite.

Defendants argue that any message of dangerousness comes "not from the [Sex Offender] Registry's availability, structure or insufficient disclaimer, but, as the Court of Appeals itself has noted on a previous occasion, from the crimes the plaintiff has committed." (Petition 19).[6] This argument obfuscates a critical distinction carefully drawn by the lower courts, a distinction Defendants would have this Court ignore: Connecticut criminal conviction records, which include a person's name, date of birth and criminal convictions and sentences, tell the public that a particular person committed a particular crime or crimes *in the past*; but the Sex Offender Registry which, in response to a click of a computer mouse, lists all registrants' current appearances and locations, and broadcasts them to protect public safety, tells the public that those registrants are likely to be *presently* dangerous and at risk of reoffending *now and in future*. *See Doe v. Dep't of Public Safety*, 271 F.3d at 48-50; *Doe v. Lee*, 132 F. Supp. 2d at 62-64. *Compare* Conn. Gen. Stat. §§54-142g et seq. (criminal conviction records are limited to past conviction information maintained as to individual

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[6] Defendants' reference here to *Doe v. Pataki*, 120 F.3d 1263 (2d Cir. 1997), *cert. denied*, 522 U.S. 1122 (1998) is inapposite. In that case, the court of appeals rejected an ex post facto challenge to New York's sex offender registry law which, unlike the CT-SORA, provides for dangerousness assessments, gives all registrants an opportunity to be relieved from registration by showing they are not dangerous, distinguishes between offenders' levels of dangerousness, and limits publication of registrants' information depending on their assessed dangerousness level.

offenders, not categories of offenders) *with* Conn. Gen. Stat. §§54-250 et seq. (registry groups sex offenders together and includes their conviction records together with current appearances and whereabouts).[7]

Defendants' argument that the court of appeals' ruling "hamper[s] the states' ability to comply with federal mandates," (Petition 3), is undermined by the statute on which Defendants purport to rely. The federal version of Megan's Law, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 United States Code Section 14071, was enacted for the "general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders." Megan's Law, Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Act, as amended [hereinafter DOJ Guidelines], 64 Fed. Reg. 2,571, 2,575 (Jan. 5, 1999). The Wetterling Act provides: "The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the

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[7] Defendants also urge that registry information "is, in fact, publicly available pursuant to Connecticut's state freedom of information laws." (Petition 18, n. 18) (*citing*, Conn. Gen. Stat. §1-210(a)). As Defendants conceded below, registrants' current photographs and addresses are not *already* available under the Connecticut Freedom of Information Act and Connecticut's criminal history laws. (Transcript of oral argument at 2-3, *Doe v. Dep't of Public Safety*, 271 F.3d 38 (No. 01-7561)) ("Some of this information would not be obtainable but for the [CT-SORA].") *Compare* Conn. Gen. Stat. §§54-142g et seq. (offenders' convictions and sentences publicly available) *with* Conn. Gen. Stat. §§54-250 et seq. (convictions and sentences plus current identifying information of sex offenders actively disseminated including via Internet).

State. . . . The State or any agency authorized by the State shall release relevant information that is *necessary to protect the public concerning a specific person* required to register under this section." 42 U.S.C. §14071(e)(1), (2) (as amended, 1998) (emphasis added).

The Wetterling "Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions *do not include all offenses that involve a sexual element*." DOJ Guidelines, 64 Fed. Reg. 2,575 (emphasis added). The CT-SORA, which covers most if not all offenses involving a sexual element, goes well beyond the mandate of the Wetterling Act. *See* Conn. Gen. Stat. §§54-251(a) (requiring registration by "[a]ny person who has been convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor *or a nonviolent sexual offense*.") (emphasis added); 54-250(5) (" 'Nonviolent sexual offense' means fourth degree sexual assault, which includes conduct involving neither violence nor minors); 54-254(a) (court may require registration for "any felony that the court finds was committed for a sexual purpose"). Indeed, since Defendant Department of Public Safety makes "no determination that any individual in the Registry is currently dangerous," the CT-SORA does not even achieve the Wetterling Act's stated purpose of releasing "relevant information that is necessary to protect the public *concerning a specific person* required to register." *See* (Petition 5); 42 U.S.C. §14071(e)(2) (emphasis added).

The Wetterling Act's disclosure requirement is entirely consistent with the district court's Injunction. The Injunction explicitly states: "nothing in this order shall . . . preclude law enforcement agencies and officers carrying out official duties from disclosing or disseminating to the public information necessary to protect the public concerning a specific person, so long as members of the [certified class, i.e., Plaintiffs] are not described to the public as being included in the registry." *Doe v. Lee*, 2001 WL 536729, at *1.

The Connecticut and federal statutes cited by Defendants do not support their Petition.

CONCLUSION

The Court of Appeals for the Second Circuit's decision correctly applies this Court's precedent, is consistent with the decisions of other courts of appeals, and does not warrant plenary review. Defendants' Petition should be denied.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, on behalf of himself and all others similarly situated, Plaintiffs, v. DR. HENRY C. LEE, in his official capacity as Commissioner of Public Safety; WILLIAM CARBONE, in his official capacity as Director of the Office of Adult Probation and Director of the Court Support Services Division of the Judicial Department; and JOHN ARMSTRONG, in his official capacity as Commissioner of Correction, Defendants.	CIVIL NO. 3:99CV00314(RNC) November 14, 2000

PROPOSED FOURTH AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This action is brought by plaintiff John Doe, on behalf of himself and all others similarly situated, to challenge the constitutionality of the Connecticut law requiring the registration and public disclosure of information concerning persons designated as "sex offenders."

2. The statutory registration and disclosure law, codified at Conn. Gen. Stat. §§ 54-250 *et seq.*, designates

persons convicted of certain specified offenses as "sexual offenders" who must register with the Department of Public Safety and provide certain identifying information.

3. In the name of public safety, the law provides for widespread public dissemination of information regarding persons designated as "sex offenders," including the publication of a physical description, photograph and current residence address on the internet. This system suggests to the public that Connecticut law enforcement officials have made a determination that persons designated as "sex offenders" pose a threat to the safety of the community. However, registration is required solely on the basis of a conviction for one of the offenses listed in the statute. Widespread dissemination of a person's designation as a "sex offender" and his identifying information occur without any assessment of whether the person in fact poses any danger to the community. As a result, persons designated as "sex offenders" are unfairly stigmatized and threatened with the ostracism, threats to personal safety, loss of employment and housing opportunities, and other adverse consequences resulting from the public perception that they are currently dangerous sex offenders who pose a threat to the safety of the community.

4. John Doe is not a dangerous sexual offender and does not pose a threat of safety to the community.

5. This action seeks a declaratory judgment holding that the statutory registration and public disclosure scheme is unconstitutional and an injunction prohibiting its further enforcement on the ground that it deprives the

plaintiff and the class members he seeks to represent of their rights as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Ex Post Facto Clause of the United States Constitution.

JURISDICTION AND VENUE

6. This action arises under 42 U.S.C. § 1983 and the Ex Post Facto Clause, Article I, Section 10, of the United States Constitution and the Fourteenth Amendment to the United States Constitution. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(4). Jurisdiction to grant a declaratory judgment is conferred by 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in this district under 28 U.S.C. § 1391.

PARTIES

Plaintiff

8. Plaintiff John Doe is a resident of the State of Connecticut who has been convicted of an offense that requires registration as a sexual offender pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* John Doe is a pseudonym that is being used in this case to protect the true identity of the plaintiff from public disclosure.

Defendants

9. Defendant Dr. Henry C. Lee is and has been the Commissioner of Public Safety since approximately June 1998. Defendant Lee is sued in his official capacity.

10. Pursuant to Conn. Gen. Stat. §§ 54-257(a) and 54-258(a)(1), the Department of Public Safety is responsible for establishing, maintaining and making publicly available a registry of all persons required to register as "sexual offenders."

11. Defendant William Carbone is and has been the Executive Director of the Court Support Services Division of the Judicial Department since September 25, 1998. Since April 2, 1999, defendant Carbone has held the position of Director of the Office of Adult Probation. As Director of the Office of Adult Probation, defendant Carbone's responsibilities are set forth in Conn. Gen. Stat. § 54-105. Defendant Carbone is sued in his official capacity.

12. Defendant John Armstrong is and has been the Commissioner of Correction since approximately January 1995. Defendant Armstrong is sued in his official capacity.

13. Pursuant to Conn. Gen. Stat. § 18-81, defendant Armstrong is responsible for the overall supervision and direction of all institutions, facilities and activities of the Department of Correction.

14. Pursuant to Conn. Gen. Stat. § 54-256, defendant Armstrong is responsible for requiring persons to register as required under Conn. Gen. Stat. §§ 54-250 *et seq.* prior to their release into the community.

15. At all times relevant hereto, the defendants acted under color of state law in connection with their enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.*

CLASS ACTION ALLEGATIONS

16. The named plaintiff brings this action pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of himself and all other persons similarly situated.

17. Plaintiff is a member of and seeks to represent two classes consisting of (1) all persons who are subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq.* (the "due process class") and (2) all persons who are subject to the registration requirement of Conn. Gen. Stat. §§ 54-250 *et seq.* and whose convictions arise out of conduct that occurred prior to the effective date of the provisions requiring their registration and/or public dissemination of identifying information concerning them (the "ex post facto class").

18. The due process class is so numerous that joinder of all members is impracticable.

19. Upon information and belief, over 1,900 persons are currently subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq.*

20. There are questions of law and fact common to the due process class, including the following:

a. Whether the members of the class have constitutionally protected liberty interests in not being designated as currently dangerous sexual offenders who pose a threat to public safety; and

b. Whether the conduct of the defendants has deprived members of the class of their liberty interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

21. The claims of the named plaintiff are typical of the claims of the members of the due process class in that the constitutional deprivation caused by the conduct of the defendants is the same for the named plaintiff and all other members of the class.

22. The named plaintiff will fairly and adequately represent the interests of the members of the due process class.

23. The ex post facto class is so numerous that joinder of all members is impracticable.

24. Upon information and belief, most of the persons required to register under Conn. Gen. Stat. §§ 54-250 *et seq.* must register based on convictions arising out of conduct that occurred prior to the effective date of the applicable registration and/or public disclosure provisions.

25. There are questions of law and fact common to the ex post facto class, including the following:

a. Whether the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* retroactively impose punishment within the meaning of the Ex Post Facto Clause;

b. Whether the burdens associated with the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are imposed for the purposes of punishment; and

c. Whether the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are punitive in fact.

26. The claims of the named plaintiff are typical of the claims of the members of the ex post facto class in

that the constitutional deprivation caused by the conduct of the defendants is the same for the named plaintiff and all other members of the class.

27. The defendants have acted on grounds generally applicable to all members of both classes, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

STATEMENT OF FACTS

A. Designation of Persons As Sex Offenders.

28. Persons convicted of certain specified offenses are designated as "sexual offenders" who must register with the Department of Public Safety. Conn. Gen. Stat. §§ 54-250 *et seq.*

29. Registration as a "sexual offender" is required solely on the basis of a conviction for one of the offenses enumerated in the statute. Conn. Gen. Stat. §§ 54-251(a), 54-252(a), 54-252(b), 54-253(a).

30. Persons required to register as sexual offenders are obligated to provide their name, residence address, criminal history record, fingerprints, a photographic image, and a description of such other identifying characteristics as may be required by the Commissioner of Public Safety. Conn. Gen. Stat. §§ 54-250(3), 54-251(a), 54-252(a), 54-252(b), 54-253(a).

31. The Department of Public Safety does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

32. Upon information and belief, consistent with Conn. Gen. Stat. § 54-1421, the Department of Public Safety has a procedure in place to respond to challenges to the accuracy or completeness of conviction records of persons believed to be subject to the registration requirements pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. Other than that, the Department of Public Safety does not have statutory authority to exercise any discretion in determining whether individuals must register or whether they may be excused from registering pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

33. The Office of Adult Probation has and continues to require persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

34. The Office of Adult Probation does not conduct any assessment of persons subject to its supervision regarding any threat an individual poses to the safety of the community in order to determine whether or not a person is subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq*.

35. The Department of Correction has required and continues to require some of the persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. and 54-102g.

36. The Department of Correction does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

B. Duration of Sex Offender Registration Requirements.

37. Persons convicted of a single offense defined as a "criminal offense against a victim who is a minor" or a "nonviolent sexual offense" must register for at least ten years. Conn. Gen. Stat. § 54-251(a).

38. Lifetime registration is required for persons convicted of a "criminal offense against a victim who is a minor" or a "nonviolent sexual offense" who have one or more prior convictions for any such offense and for persons convicted of first-degree sexual assault for engaging in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person. Conn. Gen. Stat. § 54-251(a).

39. Lifetime registration is required for persons convicted of any offense defined as a "sexually violent offense." Conn. Gen. Stat. §§ 54-252(a).

40. Lifetime registration is required for persons subject to the registration requirements under earlier versions of the sex offender registration law, except for those who qualify for court-ordered exemption from registration. Conn. Gen. Stat. §§ 54-251(b)-(c), 54-252(a).

41. The only persons who qualify for court-ordered exemption from registration are (1) persons under nineteen years of age at the time of the offense convicted of sexual assault in the second degree for engaging in sexual intercourse with another person and such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such

person and (2) persons convicted of sexual assault in the fourth degree for subjecting another person to sexual contact without such other persons' consent. Conn. Gen. Stat. § 54-251(b)-(c).

C. Requirement of Blood Sample for DNA Analysis from Persona Designated as Sex Offenders.

42. Persons required to register as "sexual offenders" are required to submit a blood sample for DNA (deoxyribonucleic acid) analysis, unless such a sample has been previously obtained in accordance with Conn. Gen. Stat. § 54-102g. Conn. Gen. Stat. § 54-250(3).

43. Persons required to register as "sexual offenders" are subject to prosecution for a class D felony if they do not submit to having a blood sample taken for DNA analysis. Conn. Gen. Stat. §§ 54-251(d), 54-252(d), 54-253(c).

44. The Department of Public Safety maintains a databank of DNA characteristics of persons designated as "sexual offenders." Conn. Gen. Stat. § 54-102g(d).

45. Upon information and belief, the Department of Public Safety does not require persons other than those designated as "sexual offenders" to submit to having blood samples taken for inclusion in a databank of identification characteristics of profiles resulting from DNA analysis.

46. Upon information and belief, persons other than those required to register as "sexual offenders" are not subject to felony prosecution for refusing to provide a blood sample to the State of Connecticut for inclusion in a

databank of identification characteristics of profiles resulting from DNA analysis.

D. Continuing Legal Obligations of Persons Designated as Sex Offenders.

47. Persons required to register as "sexual offenders" are subject to possible felony prosecution for failure to comply with the legal obligations imposed by Conn. Gen. Stat. §§ 54-250 *et seq.*

48. Failure to comply with the registration provisions subjects persons required to register as "sexual offenders" to possible prosecution for a class D felony. Conn. Gen. Stat. §§ 54-251(d), 54-252(d), 54-253(c).

49. Persons required to register as "sexual offenders" must comply with address verification procedures for their entire registration period, unless registration is suspended by the Department of Public Safety while the person is incarcerated, under civil commitment, or residing outside Connecticut. Conn. Gen. Stat. § 54-257(b)-(c).

50. Persons required to register under Conn. Gen. Stat. §§ 54-251 or 54-254 must submit an address verification form annually after their initial registration dates. Conn. Gen. Stat. § 54-257(c).

51. Persons required to register under Conn. Gen. Stat. § 54-252 must submit an address verification form every ninety days after their initial registration dates. Conn. Gen. Stat. § 54-257(c).

52. Failure to return address verification forms or providing false registration information subjects registrants to possible arrest and prosecution for a class D felony. Conn. Gen. Stat. § 54-257(c).

53. All persons required to register who change their address are required to register the new address in writing with the Commissioner of Public Safety within five days of the change. Conn. Gen. Stat. §§ 54-251(a), 54-252(a).

54. Failure to register a new address with the Commissioner of Public Safety within five days subjects registrants to possible arrest and prosecution for a class D felony. Conn. Gen. Stat. §§ 54.251(d), 54-252(d), 54-253(c).

55. Upon information and belief, the State of Connecticut does not impose registration requirements with criminal penalties on persons with criminal convictions who have completed their sentences other than persons required to register pursuant to Conn. Gen. Stat. §§ 54-250 of *et seq.*

56. Upon information and belief, persons other than those required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* are not subject to possible arrest and felony proseuction for failure to provide current residence information on an ongoing basis to the State of Connecticut.

57. Upon information and belief, persons other than those required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* are not subject to possible arrest and felony proseuction for failure to have a photograph taken by the Department of Public Safety.

E. Public Dissemination of Information Regarding Persons Designated as Sex Offenders.

58. Upon receipt of registration information, the Department of Public Safety is responsible for entering this information into a registry of persons required to register as "sexual offenders." Conn. Gen. Stat. § 54-257(a).

59. The sex offender registry must be made accessible to the public at the Department of Public Safety, each local police department, and each state police troop in Connecticut. Conn. Gen. Stat. § 54-258(a)(1).

60. The Department of Public Safety is also required to make registry information available to the public through the internet. Conn. Gen. Stat. § 54-258(a)(1).

61. The Department of Public Safety is required to issue notices, not less than once per calendar quarter, to all print and electronic media in Connecticut regarding the availability and means of accessing the sex offender registry. Conn. Gen. Stat. § 54-258(a)(1).

62. The Department of Public Safety sex offender registry website includes registration information regarding all persons who register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*, except for those who qualify for court-ordered restriction on dissemination of registration information.

63. Upon a conviction or finding of not guilty by reason of mental disease or defect, the Court may order the Department of Public Safety to restrict the dissemination of registration information for law enforcement purposes and not make it available to the public for certain

registrants if the court finds that dissemination of the information would be likely to reveal the identity of the victim within the community where the victim resides and dissemination is not required for public safety. Conn. Gen. Stat. § 54-255(a)-(b).

64. The court authority to order restricted dissemination of registration information upon a conviction or finding of not guilty by reason of mental disease or defect applies to persons who meet one of the following descriptions:

a. persons convicted or found not guilty by reason of mental disease or defect of the class B felony of sexual assault in a spousal or cohabiting relationship, Conn. Gen. Stat. § 54-255(a); or

b. Persons convicted or found not guilty of any offense requiring registration where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in Conn. Gen. Stat. § 46b-21, Conn. Gen. Stat. § 54-255(b).

65. Certain persons convicted or found not guilty by reason of mental disease or defect of offenses between October 1, 1988 and June 30, 1999 may petition the court to order the Department of Public Safety to restrict the dissemination of registration information for law enforcement purposes and not make it available to the public for certain registrants. Conn. Gen. Stat. § 54-255(c).

66. The court authority to order restricted dissemination of information for persons convicted or found not guilty of an offense between October 1, 1988 and June 30,

1999 applies to persons who meet one of the following descriptions:

a. Persons convicted or found not guilty by reason of a mental disease or defect of engaging in sexual intercourse with another person and such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person and under nineteen years of age at the time of offense, Conn. Gen. Stat. § 54-255(c)(1);

b. Persons convicted or found not guilty by reason of a mental disease or defect of subjecting another person to sexual contact without such other person's consent, Conn. Gen. Stat. § 54-255(c)(2);

c. Persons convicted or found not guilty by reason of a mental disease or defect of any offense requiring registration where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in Conn. Gen. Stat. § 46b-21, Conn. Gen. Stat. § 54-255(c)(3);

d. Persons convicted or found not guilty by reason of a mental disease or defect of sexual assault in a spousal or cohabiting relationship, Conn. Gen. Stat. § 54-255(c)(4); or

e. Persons convicted or found not guilty by reason of a mental disease or defect of any crime which requires registration when the offender (i) served no jail or prison time as a result of such conviction or finding of not guilty by reason of mental disease or defect, (ii) has not been subsequently conviced or found not guilty by reason of mental disease or defect of any crime which would

require registration, and (iii) has registered with the Department of Public Safety, Conn. Gen. Stat. § 54-255(c)(5).

67. As a condition of ordering that a person's registration information not be made available for public access pursuant to Conn. Gen. Stat. § 54-255(c), the court must find that the dissemination of the information is not required for public safety. Conn. Gen. Stat. § 54-255(c).

68. The statute does not provide any standards for a court to determine when dissemination of registration information is or is not required for public safety.

69. The Department of Public Safety sex offender registry does not provide sufficient information for members of the public to determine whether any particular person who appears on the registry poses a threat to public safety.

F. Community Notification Regarding Sex Offenders.

70. Upon receipt of registration information, the Department of Public Safety is responsible for notifying the local police department or state police troop having jurisdiction where the registrant resides or plans to reside. Conn. Gen. Stat. § 54-257(a).

71. Any state agency, the Judicial Department, any state police troop or any local police department are authoritzed to notify any government agency, private organization or individual of any registration information when such agency, said Department, such troop or local police department believes such notification is necessary

to protect the public or any individual in any jurisdiction from any person who is subject to registration. Conn. Gen. Stat. § 54-258(a)(2).

72. Conn. Gen. Stat. §§ 54-250 *et seq.* does not provide any standards to determine the circumstances when notification is necessary to protect the public or any individual in any jurisdiction pursuant to Conn. Gen. Stat. § 54-258(a)(2).

73. Upon information and belief, the Department of Public Safety does not have a procedure to permit registrants to contest the necessity of notification to protect the public or any individual in any jurisdiction from the registrant.

74. Upon information and belief, the Office of Adult Probation has a practice of notifying members of the public regarding certain persons subject to the supervision of the Office of Adult Probation for purposes of public safety.

75. Upon information and belief, other than a court hearing dealing with the issue of notification by the office of Adult Probation of members of the community with regard to an individual under the supervision of the Office of Adult Probation, there is no formal procedure afforded by the Office of Adult Probation for contesting the necessity of notification to members of the community regarding a person convicted of a sexual offense with whom they may have contact.

G. Public Perception of Sex Offender Designation.

76. The system of designating persons as "sex offenders" as described above suggests to the public that Connecticut law enforcement officials have determined that persons so designated pose a threat to public safety.

77. However, registration is required solely on the basis of a conviction for one of the offenses listed in the statute. Widespread dissemination of a person's designation as a "sex offender" and his identifying information occur without any assessment of whether the person in fact poses any danger to the community.

78. Persons designated as "sex offenders" are unfairly stigmatized and threatened with the adverse consequences resulting from the public perception that they are curently dangerous sex offenders who pose a threat to the safety of the community.

Irreparable Harm to Plaintiff and Class Members

79. The defendants' enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.* threatens the plaintiff and the members of the classes he seeks to represent with continuing irreparable injury for which there is no adquate remedy at law, including the following:

a. Plaintiff and the members of the due process class are being publicly branded as currently dangerous sex offenders who pose a threat to public safety regardless of whether there is any basis for such an assessment;

b. Plaintiff and the members of the due process class do not have a constitutionally sufficient

means of contesting their designation in the eyes of the public as currently dangerous sex offenders who pose a threat to public safety;

c. Plaintiff and the members of the ex post facto class are suffering punishment that was not authorized by the law as it existed at the time of the conduct resulting in their convictions;

d. Plaintiff and the members of both classes face possible felony prosecution if they fail to comply with the registration or address verification requirements of Conn. Gen. Stat. §§ 54-250 *et seq.*;

e. Plaintiff and the members of both classes face possible felony prosecution if they fail to comply with the requirement that they submit to having a blood sample taken for DNA analysis; and

f. Plaintiff and the members of both classes are threatened with a multitude of possible adverse consequences resulting from being branded as currently dangerous sex offenders, including shame, humilitation, ostracism, loss of employment, decreased employment opportunities, interference with business opportunities, loss of housing, interference with family and social relationships, and possible physical harm inflicted by members of the public who belive that plaintiff and the class members pose a threat to public safety.

80. Unless the defendants are enjoined from further enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.*, plaintiff and the class members will continue to suffer irreparable injury for which there is no adequate remedy at law.

First Cause of Action

81. Paragraphs 1 through 80 are realleged as if fully set forth herein.

82. Plaintiff and the members of the due process class have constitutionally protected liberty and property interests in not being falsely designated as currently dangerous sex offenders who pose a threat to public safety.

83. The liberty and property interests of the plaintiff and the members of the due process class arise under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution and Article First, sections 7, 8, 9, and 10, of the Connecticut Constitution.

84. The conduct of the defendants has stigmatized the plaintiff and the members of the due process class as currently dangerous sex offenders without any procedure to determine whether there is any factual basis for labeling plaintiff and the class members as a threat to public safety.

85. The conduct of the defendants has deprived and threatens to deprive the plaintiff and the members of the due process class of their constitutionally protected liberty and property interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Second Cause of Action

86. Paragraphs 1 through 85 are realleged as if fully set forth herein.

87. Plaintiff and the members of the ex post facto class have convictions arising out of conduct that occurred prior to the enactment of the registration and public disclosure provisions that apply to them.

88. The registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* impose punishment in violation of the Ex Post Facto Clause, Article I, Section 10, of the United States Constitution.

89. The registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are punitive in that they provide for widespread public dissemination of the designation of persons as "sex offenders" based solely on the existence of a conviction for an offense enumerated in the statute without any assessment of whether the person poses a threat to public safety.

90. The conduct of the defendants has deprived the plaintiff and members of the ex post facto class of their rights protected by the Ex Post Facto Clause.

WHEREFORE, plaintiff requests the following relief:

1. A declaratory judgment holding that Conn. Gen. Stat. §§ 54-250 *et seq.* violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

2. a declaratory judgment holding that Conn. Gen. Stat. §§ 54-250 *et seq.* violates the Ex Post Facto Clause of the United States Constitution;

3. A preliminary and permanent injunction prohibiting defendants, their employees, agents and successors in office from further enforcement of the registration and

public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.*;

4. A preliminary and permanent injunction prohibiting defendants, their employees, agents and successors in office from further public disclosure of the information compiled in the Department of Public Safety sex offender registry;

5. A preliminary and permanent injunction requiring defendants, their employes, agents and successors in office to notify all other governmental entities to which information compiled in the Department of Public Safety sex offender registry has previously been transmitted that they must refrain from further public disclosure of such information;

6. An award of plaintiff's costs and attorneys' fees pursuant to 42 U.S.C. § 1988, and

7. Such other and further relief as this Court deems necessary and proper.

/s/ Shelley R. Sadin
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, on behalf of himself and all others similarly situated, et al., Plaintiffs,	CIVIL NO. 3:99CV00314 (RNC)
v.	JULY 9, 1999
DR. HENRY C. LEE, in his official capacity as Commissioner of Public Safety, et al., Defendants.	

LOCAL RULE 9(C)1 STATEMENT

This statement sets forth the undisputed facts that may be relevant to the issues to be decided in the parties' motions for summary judgment. The exhibits referred to herein are filed as a separate appendix. Pursuant to the Scheduling Order entered in this case, it is expected that the parties will also file a Joint Stipulation of Undisputed Facts that will include most of the undisputed facts set forth herein as well as some supplemental information.

I. PARTIES.

A. Plaintiff.

1. Plaintiff John Doe is a resident of the State of Connecticut who has been convicted of an offense that

requires registration pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* John Doe is a pseudonym that is being used in this case to protect the true identity of the plaintiff from public disclosure.

B. Defendants.

2. Defendant Dr. Henry C. Lee is and has been the Commissioner of Public Safety since approximately June 1998. Defendant Lee is sued in his official capacity.

3. As Commissioner of Public Safety, defendant Lee has certain responsibilities in connection with Public Act 98-111, as amended by Public Act 99-183. Those responsibilities are set forth in Conn. Gen. Stat. §§ 54-250 *et seq.*

4. Defendant William Carbone is and has been the Executive Director of the Court Support Services Division of the Judicial Department since September 25, 1998. Since April 2, 1999, defendant Carbone has held the position of Director of the Office of Adult Probation. As Director of the Office of Adult Probation, defendant Carbone's responsibilities are set forth in Conn. Gen. Stat. § 54-105. Defendant Carbone is sued in his official capacity.

5. Defendant John Armstrong is and has been the Commissioner of Correction since approximately January 1995. Defendant Armstrong is sued in his official capacity.

6. As Commissioner of Correction, defendant Armstrong's responsibilities are set forth in Conn. Gen. Stat. § 18-81.

7. As Commissioner of Correction, defendant Armstrong also has certain responsibilities in connection with registration of persons pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* and 54-102g.

II. REGISTRATION REQUIREMENTS.

A. Registration of Sex Offenders.

8. The Department of Public Safety has in place the following policies and/or procedures pertaining to the registration of individuals pursuant to Public Act 98-111:

a. Registration Requirement Letter;

b. Change of Address Procedures;

c. Connecticut Convictions Residing Out of State;

d. Death Notification Procedures;

e. DNA Databank Evidence Collection Protocol;

f. Fingerprints;

g. Image Process;

h. Office of Field Operations Orders/Memos;

i. Out of State Convictions, Residing in Connecticut;

j. Registration Instructions;

k. Registration Requirements; and

l. Process for Return of Registration Information.

Copies of the Department of Public Safety policies are provided as Ex. A. In the event that the Department of

Public Safety replaces or modifies any of these policies and/or procedures to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

9. The Department of Public Safety does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

10. Consistent with Conn. Gen. Stat. § 54-1421, the Department of Public Safety has a procedure in place to respond to challenges to the accuracy or completeness of conviction records of persons believed to be subject to the registration requirements pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* Other than that, the Department of Public Safety does not have statutory authority to exercise any discretion in determining whether individuals must register or whether they may be excused from registering pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

11. The Department of Correction has required and continues to require some of the persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* and 54-102g.

12. The Department of Correction has in place the following policies and/or procedures pertaining to the identification and/or registration of individuals pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* and 54-102g:

a. Department of Correction Administrative Directive 9.3 (effective date June 1, 1998);

b. Memorandum to All Agency Employees from John J. Armstrong, Commissioner regarding Exception to Administrative Directive 9.3, Admissions, Transfers and Discharge, dated September 21, 1998;

c. Sex Offender Registration (revised September 30, 1998);

d. Memorandum to Facility Contact Persons, Sex Offender Registration Procedures from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Forms, dated September 24, 1998;

e. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Notification to Probation, dated September 28, 1998;

f. Memorandum to Facility Contact Persons, Sex Offender Registration Procedures from Fred Levesque, Director, Offender Classification & Population Management regarding Revised Sex Offender Registration Procedures, dated October 7, 1998;

g. Memorandum to Records Specialists from Fred Levesque, Director, Offender Classification & Population Management regarding Public Act 98-111. An Act Concerning the Registration of Sex Offenders, dated October 1, 1998;

h. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Procedures, dated November 4, 1998;

i. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Audits/Procedures, dated November 24, 1999;

j. Memorandum to Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Repealed Statutes – Sexual Offenses, dated February 23, 1999; and

k. Sex Offender Registration Procedures for Current Inmates Convicted Prior to 10/1/1998, undated.

Copies of the Department of Correction policies and/or procedures are provided as Ex. B. In the event that the Department of Correction replaces or modifies any of these policies and/or procedures to comply with Public Act 99-183, copies will be provided to the court in a supplemental filing.

13. The Department of Correction does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

14. The Office of Adult Probation has in place the following policy and/or procedure pertaining to the registration of and/or community notification regarding individuals required to register pursuant to Public Act 98-111:

a. Connecticut Office of Adult Probation, Sex Offender Notification Policy, dated October 20, 1998.

A copy of the Office of Adult Probation policy and/or procedure is provided as Ex. C. In the event that the Office of Adult Probation replaces or modifies this policy and/or procedure to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

15. The Office of Adult Probation does not conduct any assessment of persons subject to its supervision regarding any threat an individual poses to the safety of the community in order to determine whether or not a person is subject to the registration requirements of Con. Gen. Stat. §§ 250 *et seq.*

III. PUBLIC DISSEMINATION OF INFORMATION.

16. As of the date of this Statement, a direct link to the Department of Public Safety Sex Offender Registry is provided in the "Where Can I Find . . . " section of the "Frequently Asked Questions" section of the official website for the State of Connecticut. Copies of the pages providing these links are provided as Ex. E.

17. The Department of Public Safety Sex Offender Registry website consists of a direct link to search the database for all persons thereon registered pursuant to Public Act 98-111 as well as text providing certain information concerning the website and other direct links. The text section of the Department of Public Safety Sex Offender Registry website also includes a direct link to an e-mail address of the Department of Public Safety Sex Offender Registry Unit.

18. The database can be searched by last name, the first letter of a last name, town name or zip code. Searching the database by the first letter of a last name provides the names of all registrants whose last name begins with the selected letter. Searching the database by any town name or zip code provides the names of all registrants living in that town or zip code.

19. The listing of the name of the registrant provides a direct link to a page entitled "Registered Sex Offender." If the registrant has complied with the registration requirement and there have been no technical difficulties and the Department of Public Safety has had time to post the information, this page contains the name, current residence address as provided by the registrant, a photograph, and physical description.

20. Exhibit F provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website prior to late March 1999.

21. Exhibit G provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website beginning in approximately April 1999.

22. Individual sex offender listings on the Department of Public Safety Sex Offender Registry website were accessed approximately 3,045,465 times between January 1, 1999 and May 30, 1999. The number of times individual sex offender listings were accessed per month during this period was approximately as follows:

January 1999	1,937,340
February 1999	383,701
March 1999	356,879
April 1999	191,248
May 1999	176,297

23. The Department of Public Safety Sex Offender Registry Unit received a total approximately 92 e-mail messages from members of the public during the month of April, 1999, approximately 76 e-mail messages from members of the public during the month of May, 1999, and approximately 40 e-mail messages from members of the public during the month of June, 1999.

24. Exhibit H provides true and complete copies of website home pages for local television stations that provide direct links to the Department of Public Safety Sex Offender Registry website.

IV. COMMUNITY NOTIFICATION REGARDING SEX OFFENDERS.

25. The Department of Public Safety has in place the following policy and/or procedure pertaining to the public dissemination of information concerning persons registered pursuant to Public Act 98-111:

a. Memorandum to OFO Commanders from Lieutenant Colonel Timothy F. Barry, dated November 16, 1998.

A copy of this policy is provided as Ex. D. In the event that the Department of Public Safety replaces or modifies this policy and/or procedure to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

26. The Department of Public Safety does not have a procedure to permit registrants to contest the necessity of notification to protect the public or any individual in any jurisdiction from the registrant.

27. The Office of Adult Probation has the following policy in place regarding notification of members of the community regarding a person under the supervision of the Office of Adult Probation who has been convicted of a sexual offense: "Residents and/or members of the community will be provided information about sex offenders under those circumstances when it is believed that such notification is necessary to prevent a person from being victimized by the sex offender." A copy of this policy is provided as Ex. C.

28. Other than a court hearing dealing with the issue of notification by the Office of Adult Probation of members of the community with regard to an individual under the supervision of the Office of Adult Probation, there is no formal procedure afforded by the Office of Adult Probation for contesting the necessity of notification to members of the community regarding a person convicted of a sexual offense with whom they may have contact.

V. PUBLIC STATEMENTS REGARDING PERSONS REQUIRED TO REGISTER AS SEX OFFENDERS.

29. The following exhibits accurately reflect statements made in television broadcasts regarding "Megan's Law" or persons designated as "sex offenders."

Ex. I-1 *Tougher Megan's Law Approved* (WTNH television broadcast, May 2, 1998).

Ex. I-2 *Governor Signs Several Bills Into Law* (WTNH television broadcast, Aug. 10, 1998).

Ex. I-3 *Changes Coming to Megan's Law* (WTNH television broadcast, Sept. 30, 1998).

Ex. I-4 *Halloween Safety* (WTNH television broadcast, Oct. 30, 1998).

Ex. I-5 *State Ready to Put Sex Offender Registry on Internet* (WTNH television broadcast, Dec. 29, 1998).

Ex. I-6 *"Megan's Law" list hits the Web* (WVIT/MSNBC television broadcast, Jan. 1, 1999).

Ex. I-7 *Cops Meet to Discuss Missing Persons in Sex Offender Database* (WTNH television broadcast, Feb. 10, 1999).

Ex. I-8 *Megan's Law has real estate agents wondering what they have to disclose* (WTNH television broadcast, May 1, 1999).

Ex. I-9 *Senate gives final approval to Megan's Law bill* (WTNH television broadcast, June 7, 1999).

Ex. I-10 *Text of Gov. John G. Rowland's speech marking the end of the 1999 legislative session* (WTNH television broadcast, June 9, 1999).

30. The following exhibits are accurate copies of articles that have appeared in the press regarding "Megan's Law" or persons designated as "sex offenders."

Ex. J-1 *Family Sees Sex-Offender Bill Signed; "Megan's Law" A Reality*, Hartford Courant, May 31, 1995.

Ex. J-2 *Bill Targets Suspected Abductors*, Hartford Courant, March 1, 1996.

Ex. J-3 *30 Discuss Megan's Law*, Register Citizen, September 24, 1997.

Ex. J-4 *Confusion Causes Varied Access to Data on Sex Offenders,* Hartford Courant, October 10, 1997.

Ex. J-5 *"Megan's Law" and Questions Of Liability,* New York Times, December 14, 1997.

Ex. J-6 *Rallying for Tougher Megan's Law,* Hartford Courant, September 19, 1998.

Ex. J-7 *Publicizing Sex Offenders, State Legislator to Present TV Profiles,* Hartford Courant, October 13, 1998.

Ex. J-8 *Unmasking Sex Offenders,* Bristol Press, October 13, 1998.

Ex. J-9 *Officer Stresses Parent Awareness, Wants Less Focus on Molester Lists,* Hartford Courant, October 17, 1998.

Ex. J-10 *A Contest Focusing on Conduct, Secretary of the State Candidates Assail One Another,* Hartford Courant, October 28, 1998.

Ex. J-11 *Kids' Safety A Key Issue, Widlitz Defends Megan's Law Vote Puffer Has Decried,* Hartford Courant, October 29, 1998.

Ex. J-12 *Sex Offender List Available to All Parents,* Waterbury Republican-American, December 10, 1998.

Ex. J-13 *"Megan's Law": More Harm Than Good?,* Connecticut Law Tribune, December 21, 1998.

Ex. J-14 *Sex Offenders' Names To Be On Internet,* Hartford Courant, December 30, 1998.

Ex. J-15 *Sex offender registration goes online,* New Haven Register, December 30, 1998.

Ex. J-16 *Web Site Lists Sex Offenders; Debate Ensues,* Hartford Courant, January 2, 1999.

Ex. J-17 *Megan's Law Unfair,* Connecticut Law Tribune, January 11, 1999.

Ex. J-18 *Changes Needed In Megan's Law,* Hartford Courant, January 24, 1999.

Ex. J-19 *Many missing from Megan's Law registry,* Journal Inquirer, February 17, 1999.

Ex. J-20 *Megan's Law Effort Opposed,* Hartford Courant, April 14, 1999.

Ex. J-21 *Does Megan's Law need a reality check?,* Waterbury Republican-American, May 2, 1999.

Ex. J-22 *Forum to Explain Details of Megan's Law,* Hartford Courant, May 25, 1999.

Ex. J-23 *House Backs Expanding Megan's Law To Cover More Crimes,* Hartford Courant, June 2, 1999.

31. The following exhibits accurately reflect public statements made by members of the Connecticut General Assembly prior to passage of Public Act 98-111.

Ex. K *Senate Debate on Senate Bill 65, An Act Concerning the Registration of Sexual Offenders* (Apr. 28, 1998).

Ex. L *House of Representatives Debate on Senate Bill 65, An Act Concerning the Registration of Sexual Offenders* (May 2, 1998).

32. The following exhibits accurately reflect public statements made by members of the Connecticut General Assembly prior to passage of Public Act 99-183.

Ex. M *House of Representatives Debate on House Bill 6785, An Act Concerning the Registration of Sexual Offenders* (June 1, 1999).

Ex. N *Senate Debate on House Bill 6785, An Act Concerning the Registration of Sexual Offenders* (June 7, 1999).

Respectfully submitted,

BY: /s/ Ann M. Parrent
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed postage prepaid to Margaret Q. Chapple, Lynn D. Wittenbrink, Assistant Attorneys General, 110 Sherman Street, Hartford, CT 06105 this 9th day of July 1999.

/s/ Ann M. Parrent
Ann M. Parrent

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE *Plaintiff,* — CIVIL ACTION NO. 3:99CV0314(RNC)

VS.

DR. HENRY LEE, ET AL. *Defendants* — SEPTEMBER 13, 1999

LOCAL RULE 9(C)2 STATEMENT IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A. Response to Plaintiff's Local Rule 9(c)1 Statement

1. Admitted

2. Admitted

3. It is admitted that as Commissioner of Public Safety, the defendant Commissioner Lee has certain responsibilities in connection with Public Act 98-111, as amended by Public Act 99-183. As the plaintiff alleges that those responsibilities are set forth in As Conn. Gen. Stat. §§ 54-250 *et seq*, and as Conn. Gen. Stat. §§ 54-150 *et seq* are statutory provisions, the defendants neither admit nor deny their content.

4. Admitted

5. Admitted

6. Admitted.

7. As the plaintiff alleges that the defendant Commissioner Armstrong has responsibilities in connection with registration of persons pursuant to As Conn. Gen. Stat. §§ 54-250 *et seq*, and as §§ 54-250 *et seq* are statutory

provisions, the defendants neither admit nor deny their content.

8. Admitted

9. Admitted

10. Admitted.

11. Admitted

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted

17. Admitted

18. Admitted.

19. Admitted.

20. It is admitted that Exhibit F provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website along with a copy of the State of Connecticut Department of Public Safety website.

21. It is admitted that Exhibit G provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website beginning in approximately late March, 1999, along with a copy of the State of Connecticut Department of Public Safety website.

22. Admitted.

23. Admitted.

24. Admitted

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Denied.

31. Admitted.

32. Admitted.

B. Material Facts as to Which there is a Genuine Issue to Be Tried

1. A genuine issue of material facts exists as to whether or not the plaintiff has suffered an adverse consequences as a result of his name and criminal history information being made available Connecticut's Department of Public Safety website that is maintained in accordance with Public Act No. 98-111 as modified by Public Act 99-183.

2. A genuine issue of material facts exists as to the proximate cause of any ill effects the plaintiff claims to have suffered as a result of his name and criminal history information being made available Connecticut's Department of Public Safety website that is maintained in accordance with Public Act No. 98-111 as modified by Public Act 99-183.

DEFENDANTS,
Dr. Henry C. Lee, et al.

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: /s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
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CERTIFICATION

I hereby certify that a copy hereof was mailed this 13th day of September, 1999, first class postage prepaid, to:

Ann Parrent
Connecticut Civil Liberties Union
32 Grand Street
Hartford, CT 06106

/s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
Assistant Attorney General